

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Jacob Anthony Allen,

Plaintiff,

v.

Case No. 2:20-cv-2121

Rodney Smith, et al.,

Defendants.

ORDER

This is a civil rights action brought pursuant to 42 U.S.C. §1983 by Jacob Anthony Allen, a state inmate proceeding without the assistance of counsel, against Athens County Sheriff Rodney Smith, Joshua VanBibber, warden of the Southeastern Ohio Regional Jail ("SEORJ"), and SEORJ Health Care Administrator Heather Dorsey. On September 22, 2020, the magistrate judge filed a report and recommendation on the initial screen of plaintiff's complaint pursuant to 28 U.S.C. §§1915(e)(2) and 1915A, which requires the court, in a civil action in which a prisoner seeks redress from a governmental officer or employee, to dismiss a complaint that fails to state a claim upon which relief may be granted. 28 U.S.C. §1915A(a)-(b)(1).

The magistrate judge recommended that all official capacity claims be dismissed. The magistrate judge also recommended that plaintiff's individual capacity claims against defendants Smith and VanBibber be dismissed for failure to state a claim for which relief may be granted. The magistrate judge further recommended that plaintiff's Eighth Amendment claim of indifference to medical needs asserted against defendant Dorsey in her individual capacity be permitted to proceed. The magistrate judge noted that plaintiff

made allegations in his complaint concerning the conduct of officers of the Athens County Sheriff's Department during his arrest, but that it was not clear whether plaintiff intended to assert any claims against these officers. The magistrate judge therefore recommended that plaintiff be granted leave to amend his complaint to assert claims against these officers.

The report and recommendation advised plaintiff that the failure to object to the report and recommendation would result in a waiver of the right to de novo review by the district judge and a waiver of the right to appeal the judgment of the district court. Doc. 4, p. 10. No objections to the report and recommendation have been filed.

The court agrees with the report and recommendation (Doc. 4), and it is hereby adopted. All official capacity claims and the individual capacity claims asserted against defendants Smith and VanBibber are dismissed pursuant to 28 U.S.C. §§1915(e)(2)(B) and 19115A for failure to state a claim for which relief may be granted. Plaintiff will be permitted to proceed on his claim against defendant Dorsey in her individual capacity. Plaintiff is hereby granted leave to file an amended complaint to assert claims against the arresting officers he references in the complaint, if he so desires, no later than November 3, 2020.

Date: October 13, 2020

s/James L. Graham  
James L. Graham  
United States District Judge